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11 *Attorneys for Defendants Walmart.com USA LLC*

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

15 JAMES NOREM, on behalf of himself and others)
 similarly situated,)

16 Plaintiff,)

17 v.)

18 NETFLIX, INC., and WALMART.COM USA LLC,)

19 Defendants.)
 20)
 21)
 22)
 23)
 24)
 25)
 26)
 27)
 28)

Civil Action No. CV-09-00956-MJ

**ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED**

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 PLEASE TAKE NOTICE that Defendant Walmart.com USA LLC (“Walmart.com”)
3 submits this Administrative Motion to relate *Norem v. Netflix, Inc.*, Case No. CV-09-00956-MJ
4 (“*Norem*”), filed on January 28, 2009 in the Superior Court of the State of California in and for the
5 County of Santa Clara, and removed on March 4, 2009 to the United States District Court for the
6 Northern District of California, to the cases listed in Section I pursuant to Local Civil Rule 3-12.

7 **I. RELATED CASES**

8 Please see Exhibit 1 (“Related Cases”) to the Declaration of Kathryn P. Hoek in Support of
9 Walmart.com’s Administrative Motion to Consider Whether Cases Should Be Related (“Hoek
10 Decl.”).

11 **II. RELATIONSHIP OF THE ACTIONS**

12 The *Norem* case involves substantially the same parties, transaction, and event as those at
13 issue in the earliest-filed case, *Resnick v. Walmart.com USA LLC*, CV-09-0002-PJH (“*Resnick*”)
14 and the Related Cases: specifically, an alleged agreement between Netflix, Inc. and Walmart.com
15 “to divide the markets for the sales and online rentals of DVDs in the United States . . . , with the
16 specific purpose and intended effect of monopolizing and otherwise unreasonably restraining trade
17 in the online DVD rental market.” Hoek Decl., Ex 2 (*Norem* Compl.) ¶ 1. Plaintiff Norem seeks
18 to assert claims for alleged antitrust violations under California’s Cartwright Act, Cal. Bus. &
19 Prof. Code §§ 16720, 16727. The Plaintiffs in the Related Cases seek to assert claims for alleged
20 antitrust violations under the Sherman Act, 15 U.S.C. §§ 1 and 2.

21 Plaintiff Norem seeks to represent a putative class that is entirely encompassed by the
22 putative classes in *Resnick* and the Related Cases. Plaintiff Norem seeks to represent a putative
23 class of “[a]ll residents of California who paid a ‘subscription fee’ to Netflix to rent DVDs online
24 after May 19, 2005 up to the present.” Hoek Decl., Ex 2 ¶ 19. Plaintiffs in the *Resnick* action
25 seek to represent a putative class made up of “[a]ny person the United States that paid a
26 subscription fee to Netflix to rent DVDs, on or after May 19, 2005 up to the present.” Hoek Decl.,
27 Ex. 3 (*Resnick* Compl.) ¶ 55.

1 Relating these cases will help eliminate duplicative discovery, prevent inconsistent pretrial
2 rulings, and conserve the resources of the parties, counsel, and this Court.

3 **III. CONCLUSION**

4 *Norem* and the Related Cases satisfy the criteria of Local Civil Rule 3-12. Therefore,
5 Walmart.com respectfully requests that *Norem* be deemed related to the cases listed in Section I
6 and be assigned to the Honorable Phyllis J. Hamilton.

7
8 Dated: March 23, 2009

Respectfully submitted,

9 SUSMAN GODFREY L.L.P.

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